IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/07/2003

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The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

W.P. No.5236 OF 2000

1. Union of India, rep. by
Joint Secretary (E)
Ministry of Railways
Government of India
New Delhi, representing
President of India

2. The General Manager
Southern Railway
Park Town
Chennai ..... Petitioners

-Vs-

1. The Registrar
Central Administrative Tribunal
Chennai Bench
Chennai

2. T.S. Manickavasagam

3. The Secretary
Union Public Service Commission
New Delhi :: Respondents

Petition under Art.226 of the Constitution of India, praying
for a Writ of Certiorari as prayed for in the petition.

For Petitioner :: Mr. G. Sureshkumar

For Respondents :: Mr. K.V. Subramanian R2

:ORDER

V.S. SIRPURKAR, J.

This is a writ petition by the Railway Administration against
the orders passed by the Central Administrative Tribunal (in short 'the

Tribunal'), allowing the original application filed by the second respondent herein, who had challenged the departmental proceedings started against him and the consequent punishment of ten per cent cut in his monthly pension awarded by the Hon'ble President of India.

2. The respondent, at the relevant time, was working as the Deputy Chief Mechanical Engineer and ultimately retired from railway services but, before that, a memo of charges was served on him on 18-1-1993 wherein, the following charges were framed against him:

"Article of Charge I:

In the procurement of wheel discs for construction of 2' - 0" NG coaches-

a. He accepted supply of 30 Nos. of wheel disc 2'-0" with defects even though he was aware of the position that the boredia and the boss wall thickness of the wheel disc were dimensionally not agreeing to drawing No.LA/80 and the wheel discs required to be rectified before fitment.

b. He failed to ensure joint inspection along with the inspecting agencies and the firm representative as per stores code No.S-762- Note-2 having rejected per stores code No.S-762-2 having rejected 10 Nos. of wheel disc received in the initial supply.

c. He had resorted to giving oral instruction to the Dy SS/Wheel Shop/MYSS to carry out the rectification work on the wheel discs without following the Mechanical code rule 1032(3).

d. On seizure of P.O. Docket No.4/89/5101/1/44614 dt. 27-6-90 by CVI/A on 26-4-91, he in order to camouflage his failures, resorted to establish that rectification charges have been estimated and debit raised against firm.

e. He in spite of being informed that the estimate cost of Rs.2622/- was worked out for a variation upto 5 mm in the boss wall thickness of wheel disc accepted the estimate cost which is unrealistic, eventhough he is aware of the fact that there were wheel discs with variation upto 12 mm.

Article of Charge II:

In respect of the tender for the purchase of removal of workshop refuse for the Mysore Workshop for the year 1990-91, even though the tender conditions stipulate that the tenderer for the refuse contract has to keep his offer open till it is accepted and that the E.M.D. is liable for forfeiture if the tenderer resiles from his offer after making recommendations to the Competent Authority to award the tender to the highest tenderer and before the Competent Authority had acted on the recommendation, Shri T.S. Manickavasagam, as a Member of the Tender Committee, suo motu recommended to the accepting authority that the highest tenderer along with the next highest tenderer has withdrawn his offer and recommended that their Earnest Money Deposit may be refunded to them. This was contrary to the conditions of the tender and this was not brought to the competent authority, as a result of which such recommendation was accepted and Earnest Money Deposit was refunded to the two tenderers, who had withdrawn their offer. Shri T.S.Manickavasagam's act in misleading the competent authority is indicative of a lack of devotion to duty and consequently conduct unbecoming of a Railway servant."

The allegations are self-explanatory and may not detain us.

3. The respondent filed his reply to the charges and a fullfledged enquiry ensued wherein, he was held partly guilty of both the

charges. This enquiry was also considered by the Union Public Service Commission which recommended the punishment of ten per cent cut in the monthly pension to the Hon'ble President of India, who accepted the same and inflicted the punishment.

4. In his Original Application before the Tribunal, the respondent assailed the enquiry mainly on the merits suggesting therein that there was no question of his being found guilty as he was not the person responsible and that he acted well within rules. The Tribunal accepted his case and came to the conclusion that the conclusions arrived at by the Enquiry Officer and the Union Public Service Commission were arbitrary and that, in fact, the charges were not proved at all. The Tribunal also adversly commented on the delayed action on the part of the Railway Administration. The Tribunal went to the extent of holding the findings of the Enquiry Officer to be perverse and ultimately allowed the original application by quashing the impugned order imposing the penalty. It is this order against which the Union of India comes by way of this writ petition.

5. Learned counsel for the petitioner, Shri G. Sureshkumar, firstly taken us through the entire enquiry report, which is on record, and invited our attention to paragraphs 27 and 28 as also paragraphs 36 to 38 and pointed out that the enquiry officer had sufficient material before him to come to the conclusion that the first and the second charges were partly proved. Learned counsel pointed out that in this enquiry report a clear-cut finding was reached about the guilt of the delinquent officer by discussing the irregularities committed by him in seriatim. Learned counsel thereafter took us to the consideration of the enquiry report by the Union Public Service Commission (in short 'UPSC') wherein also, the delinquency of the concerned officer was discussed threadbare though with reference to the enquiry report. Learned counsel then argues that both these documents would suggest unquestionably that there was good deal of material available in shape of oral evidence of the witnesses as well as the incriminating documents to come to the conclusion that the delinquent was partly guilty of the charges. Learned counsel, therefore, argues and in our opinion rightly, that there was abundance of materials available which was properly considered not only by the enquiry officer but also by the UPSC as it was obliged to consider the same in view of the rules. Learned counsel stretching his arguments further points out that if this was so then the Tribunal could not have lightly set aside these findings as if acting in an appellate capacity. He points out that there can be no doubt that the delinquent was responsible for allowing the supply of the defective materials like 30-Nos. of wheel discs and that being a technical person, it was the sole responsibility of the delinquent to see that the materials supplied was flawless. Learned counsel points out that both the authorities viz. enquiry officer and the UPSC came to the conclusion that these materials, which were to be used by the Railways, had ultimately to be treated again and that too at the expenses of the Railway administration and there could be no doubt that the delinquent officer was guilty of allowing the defective materials to be accepted. Learned counsel points out further that even in the matter of acceptance of tenders, the delinquent officer practically allowed a party which had breached the terms of the tender to go scot-free so as to be able to take back the earnest money deposit which would

otherwise be liable for confiscation. In that also, the delinquent officer, though not fully, partly responsible. Learned counsel, therefore, argues that it is now settled position in law that the Tribunal cannot act as an appellate authority and its role is restricted while entertaining the findings arrived at by the enquiry officer. It can at the most see whether there was any material available on record to nail the delinquent officer and whether there was any basis for the enquiry officer or the disciplinary authority to draw the inferences which they did. Learned counsel argues that the Tribunal has given a very casual treatment to the findings and has not even bothered to show as to how the inferences could not at all be drawn. Learned counsel points out that the Tribunal has also not given any finding that there was no material available for the enquiry officer to reach the conclusion that he did. Learned counsel, therefore, argues that the Tribunal has committed a gross error of jurisdiction in assuming the role of an appellate authority.

6. Learned counsel invited our attention to the decision in State of Tamil Nadu v. S. Subramaniam (AIR 1996 SC 1232) . In this case, in paragraph 4, the Supreme Court held as under:
"that in judicial review the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."
Learned counsel says that this judgment would clinch the issue because in the present case, the Tribunal has not even done that and has in a very sketchy manner set aside the findings reached by the enquiry officer and endorsed by UPSC.

7. To the same effect are the observations in State of Tamil Nadu v. K.V. Perumal and others (1996 V SCC 474) that it is not the province of the Administrative Tribunal to go into the truth or otherwise of the charges and that the Tribunal is not an appellate authority over the departmental authorities.

8. Learned counsel also relied on the decision in SECRETARY TO GOVERNMENT, HOME DEPARTMENT AND OTHERS v. SRIVAIKUNDATHAN (1998 [9] SCC 553) wherein, in paragraph 3, the Supreme Court has scoffed at the Administrative Tribunal sitting as an appellate authority over the findings of the enquiry officer. It is suggested in this case that unless the findings are perverse and unless it was found that there was no evidence whatsoever before the enquiry officer, the Tribunal could not have set aside the findings of the enquiry officer merely by expressing dissatisfaction with the evidence which was led. Learned counsel, therefore, argues that in allowing the original application, the Tribunal had committed a grave error of

jurisdiction.

9. We were taken through the order of the Tribunal in extenso and we find that the Tribunal has been more or the less casual in allowing the original application. In paragraph 6, the Tribunal has discussed the whole issue wherein it has disapproved of the service of the charge-sheet before one month of the date of superannuation of the delinquent officer. In making an observation that no material was placed before the Tribunal to show that necessary care and caution was not exercised by the applicant and that he was responsible for the defective disc regarding the variation in thickness. We, however, find abundance material available on record that it was this delinquent officer who was responsible for accepting the defective discs. In one stroke of pen, the Tribunal seems to have rejected the findings of the enquiry officer regarding the lack of care and caution on the part of the delinquent officer in accepting the defective materials. It was liable to be seen in this behalf that it is nobody's case that that the materials supplied and accepted by the delinquent officer was without any defects. The question is as to how the defective materials were allowed to be accepted without demur and why the Railway administration was made to pay for rectifying those defects. The Tribunal has not even bothered to discuss the evidence led at the enquiry nor the findings reached by the enquiry officer in respect of the first as well as the second charge. The Tribunal has merely dubbed the conclusions arrived at by the enquiry officer to be arbitrary and perverse. Very strangely, the Tribunal has observed that these were the charges which could not said to have been proved partly and that, therefore, the finding that the charges were proved in part was perverse. We are not able to agree with the reasoning of the Tribunal. A very look at the charge-sheet would suggest that the charges, at least the first charge was divided into sub-charges and the enquiry officer as well as the UPSC had displayed sufficient care in dividing that charge and considering each sub-division of the said charge meticulously.

10. As against this, Shri K.V. Subramanian, however, very fervently argued that this was a case where even on the basis of the evidence recorded during the enquiry, the respondent could not be found guilty. Shri Subramanian very earnestly tried to show from the whole material that it was not at all proved that the delinquent officer was guilty in any manner much less to the extent suggested by the enquiry officer and the UPSC.

11. We have given a very careful consideration to the contentions raised by the learned counsel. In fact, what we are being persuaded to do is to re-appreciate the findings reached by the enquiry officer and which was also reiterated by the UPSC. That is clearly not possible in view of the settled law in that behalf. This is besides the fact that we do not have before us the depositions and all the documents which were placed before the enquiry officer. It cannot be ignored that there was oral evidence led before the enquiry officer and also the documents were marked. All that material is not before us, and, in the absence of which, it will not be possible for us really to appreciate the contention urged by the learned counsel that the delinquent officer was in fact not guilty of the charges. Again, we hasten to add that that is not our jurisdiction also.

12. Learned counsel invited our attention to the decision in A.L. KALRA v. THE PROJECT AND EQUIPMENT CORPORATION OF INDIA LTD. (AIR 198 4 SC 1361) and more particularly to the observations in paragraph 23 where the Supreme Court has come to the conclusion that the charge was an eye-wash and that it did not constitute a misconduct. We do not see any parallel in this case so as to be made applicable to the present case. The charges here are well defined and have been subdivided also for the sake of convenience even of the delinquent. We do not see as to how this ruling can help the respondent.

13. Learned counsel then relied on the decision in UNION OF INDIA v. J. AHMED (AIR 1979 SC 1022). This was a case where the Supreme Court was asked to decide a question as to what constitute the misconduct and whether the lack of efficiency or failure to attain highest standards of administrative ability, etc. would amount to misconduct. The Apex Court held that the lack of personal qualities could not constitute misconduct for the purposes of disciplinary proceedings. From this learned counsel wanted to argue that all that was alleged against the delinquent officer was inefficiency and failure on his part to apply himself fully to the task. We do not agree. This was a case where the delinquent officer was a man holding technical qualification and was responsible for seeing that the material which is used for Railways was a defectless material. In accepting such material, the delinquent had shown negligence which would squarely covered under Rule 3.1 and Rule 3.2. The ruling relied upon by the learned counsel for the respondent would, therefore, be of no help.

14. Learned counsel then relied upon the decision in UNION OF INDIA v. K.A. KITTU AND OTHERS (2000 [1] SCC 65) to suggest that the Tribunal, while exercising the powers of judicial review, could examine/consider contradictory findings of the enquiry officer; findings based on no evidence; and also instances where there are no clear findings. We have no dispute with this proposition because they are in keeping with the law earlier declared by the Supreme Court in the cases which we have already cited. Suffice it to say that the Tribunal has not even bothered to critically examine the findings and has also observed in a round about manner that the charges were not proved.

15. Lastly, the learned counsel relied on the famous decision of the Supreme Court in D.V. KAPOOR v. UNION OF INDIA (AIR 1990 SC 1923) and more particularly to the observations in paragraph 5 and tried to suggest that the pension could be withdrawn by the President only if the pensioner is guilty of grave misconduct or negligent during the period of his service and for that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of his duties while in office. We have absolutely no quarrel with this proposition. However, we hasten to point out that the findings of the enquiry officer as also by the UPSC would suggest that the negligence shown by the delinquent officer was undoubtedly of grave nature.

16. Lastly, learned counsel argued that pension was a very valuable right as was found by the Supreme Court in the decision reported in

State of Punjab v. Iqbal Singh (AIR 1976 SC 667) and it should not be lightly dealt with. We have absolutely no quarrel with the proposition. However, in this case, we are unable to subscribe to the argument that anything has been done against the delinquent officer in the light-hearted manner.

17. In short, the judgment of the Tribunal is patently incorrect and the Tribunal has committed an error of jurisdiction in allowing the original application. We are of the clear opinion that the judgment of the Tribunal is to be set aside and would direct to set aside. We would also direct the original application to be dismissed. The writ petition is allowed. No costs.

Index:Yes
Website:Yes

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To:

1. The Registrar
Central Administrative Tribunal
Chennai Bench
Chennai

2. The Secretary
Union Public Service Commission
New Delhi